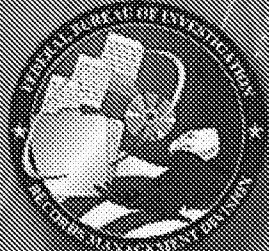


Appeals and Litigation



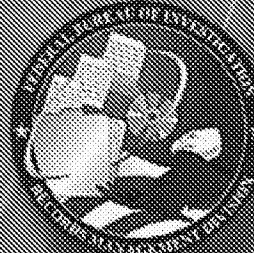
Agenda

- Appeals Overview
 - Litigation Overview
 - Terminology
 - Definitions
 - Review



Appeals Overview

- Appeals submitted to OIP
 - Instructions for submitting appeals included in request response
- Generally based on dissatisfaction with response to FOIA request
- OIP Attorneys review and
 - Affirm - agree
 - Remand - reopen and try again

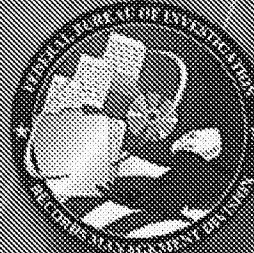


Appeals Overview

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~~SBU~~ — *Sensitive but Unclassified*



Appeals Overview

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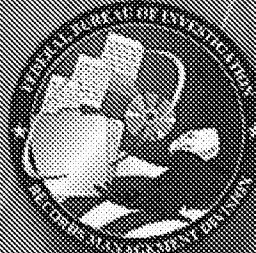
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Agenda

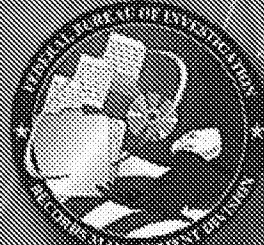
- Appeals Overview
- Appeals Screens
- **Litigation Overview**
- Terminology
- Definitions
- Review



Litigation Overview

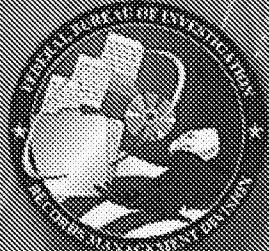
- Purpose: to provide a general overview of FOIA litigation considerations
- Lawsuits can be filed for almost any reason

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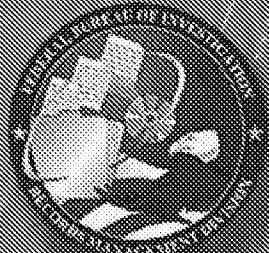
Litigation Overview

- FOIPA complaints are filed in district court of
 - District where complainant resides, or
 - District where complainant has principal place of business, or
 - District where agency records are situated, or
 - District of Columbia
- Lawsuits can be filed for any reason, however...



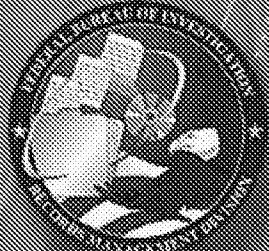
Litigation Overview

- Judicial remedies can only be invoked if an agency has:
 - Improperly
 - Withheld
 - Agency Records
- Complaints will generally be dismissed without allegation of violation of the above three components



Litigation Overview

- Statute of Limitations:
 - Six years after plaintiff has 'constructively' exhausted administrative remedies
- Requesters must 'exhaust administrative remedies' prior to filing a complaint
 - Means an agency needs an opportunity to exercise its discretion and expertise on request and make a record to support its decision
 - As you know, agencies have 20 days to respond to a perfected request



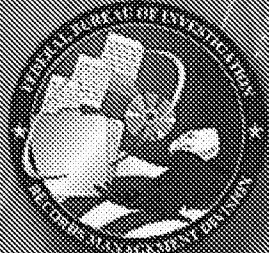
Litigation Overview

- After exhausting administrative remedies, requester can seek immediate judicial review
 - Right to immediate judicial review lapses if an agency responds to request at any time before requester's FOIA suit is filed
 - Requester must then administratively appeal a denial and wait at least 20 working days for agency to adjudicate appeal before starting litigation
- If agency response fails to give notice of right to file administrative appeal:
 - Requester's exhaustion obligation may be excused



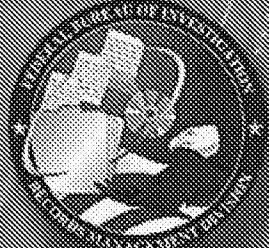
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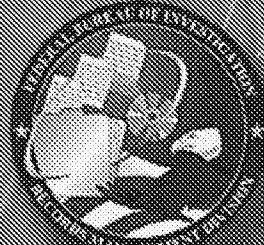
Terminology

- Stay of Proceedings: a court-ordered short-term delay in judicial proceedings
 - Requester files suit in court
 - Court may retain jurisdiction over case by issuing stay of proceedings, while allowing agency additional time to complete processing of request
- Often referred to as Open America



Terminology

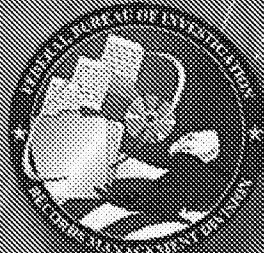
- Open America based on *Open America v. Watergate Special Prosecution Force*
 - Was determined that 'exceptional circumstances' may exist when an agency is deluged with excessive requests and existing resources are inadequate to deal with volume within time limits



Terminology

- Adequacy of Search

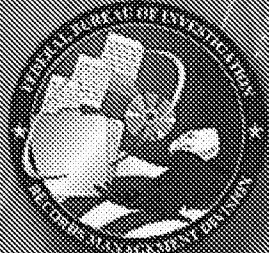
- Sometimes lawsuits will challenge nature and extent of search for responsive documents
- Agency must show good-faith effort to conduct search for requested records using methods that would be reasonably expected to produce requested info
- Searching through agency indices containing records where requester is subject of record has been held to be adequate



Terminology

- Adequacy of Search (cont)

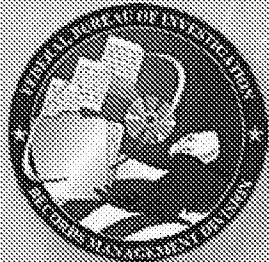
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Terminology

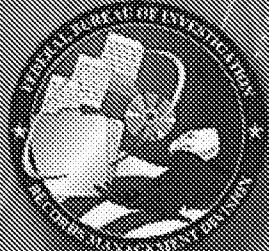
- Attorney Fees and Costs
 - Reasonable attorney fees and litigation costs can be awarded if plaintiff has substantially prevailed

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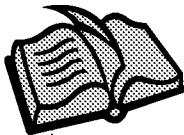


Definitions



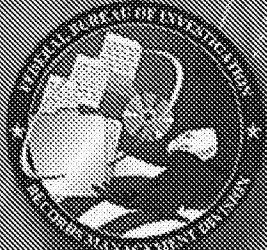
“Discovery”

Process whereby parties gain info from their adversaries or from 3rd parties concerning matters at issue in litigation



“Pleading”

Every legal document filed in a lawsuit, petition, motion and/or hearing, including complaint, petition, answer, demurrer, motion, declaration and memorandum of points and authorities (written argument citing precedents and statutes)



Definitions



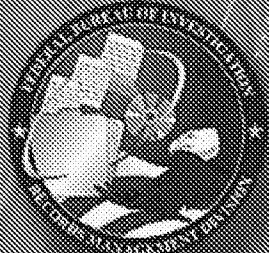
“Plaintiff”

The party who initiates a lawsuit by filing a complaint



“Summary Judgment”

A court order ruling that no factual issues remain to be tried and therefore a cause of action or all causes of action in a complaint can be decided upon certain facts without trial



Definitions



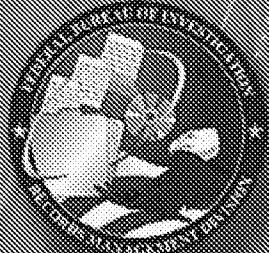
“Complaint”

First document filed with the court by a person or entity claiming legal rights against another



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Review

1. How do you become aware of appeals assigned to you?
2. What are the courts that a FOIPA complaint can be filed in?
3. What happens when a lawsuit has been filed but there are no improperly withheld agency records?
4. What is the Statute of Limitations for filing a complaint?